UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Kurt Russell Taylor

Appeal No. 2006-2411
Application No. 09/583,411

ON BRIEF

Before JOSEPH L. DIXON, LANCE LEONARD BARRY,
and HOWARD B. BLANKENSHIP, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

A patent examiner rejected claims 1-57. The appellant appeals therefrom

under 35 U.S.C. § 134(a). We affirm-in-part.

I. BACKGROUND

The invention at issue on appeal concerns network management. An Object

Identifier ("OID") is an Internet standard mechanism for naming objects

representing managed data. More specifically, the Structure of Management

Information ("SMI") mechanism, allows an object and its attributes to be retrieved, managed, and monitored. (Spec. at 1.)

The Simple Network Management Protocol ("SNMP") is a widely used network monitoring and control protocol that makes use of OIDs. (*Id.*) Lightweight Directory Access Protocol ("LDAP") is another example of a management protocol that uses SMI OIDs. (*Id.* at 2.) "The Common Information Model (CIM) also describes management information in an OID format." (*Id.*)

Heretofore, asserts the appellant, a server processing queries using a variety of protocols had to keep a separate repository of objects for each protocol. Often these repositories contained references to the same object, albeit with a different OID. Plural protocols changing an object in different ways lead to inconsistencies. (*Id.*)

In contrast, the appellant's invention provides a common repository for all OID-based objects regardless of the protocol scheme while allowing queries from

each of a variety of protocols such as SNMP, LDAP, and CIM. The repository

easily expands to accept existing OID-based data trees from a current repository and

seamlessly integrates the new repository into the common repository. (*Id.* at 3.)

A further understanding of the invention can be achieved by reading the

following claims.

    1. A method on a server in a distributed data processing system
for maintaining a logical composite repository of Object
Identifier (OID) tree structures, the method comprising the steps of:

    receiving, in an OID abstraction layer, an OID tree structure
from a repository; wherein the OID abstraction layer is capable of
receiving queries for objects in two or more different protocols and
supports the two or more different protocols by mapping queries from
multiple protocol interfaces to application program interface (API)
requests that the repository understands;

    registering the OID tree structure with a registry associated with
the OID abstraction layer; and

    adding the OID tree structure to a repository associated with the
OID abstraction layer.

9. A method on a server in a distributed data processing system for retrieving object data from a repository, comprising;

receiving a first query for the object data from a requester in the distributed data processing system, wherein the first query is in a protocol recognized by an OID abstraction layer; wherein the OID abstraction layer is capable of receiving queries for objects in two or more different protocols and supports the two or more different protocols by mapping queries from multiple protocol interfaces to application program interface (API) requests that the repository understands;

interpreting the first query according to the protocol recognized by the OID abstraction layer, wherein the protocol recognized by the OID abstraction layer is one of the two or more different protocols;

locating a repository that contains the object data requested in the first query based on a registry associated with the OID abstraction layer; and

retrieving the object data from the repository using an OID abstraction layer application program interface (API).

Claims 1, 9, 20, and 39 stand rejected under 35 U.S.C. § 103(a) as obvious

over U.S. Patent No. 5,913,037 ("Spofford"); U.S. Patent No. 5,951,649

("Dobbins"); and U.S. Patent No. 6,023,684 ("Pearson"). Claims 2-4, 21-23, and

40-42 stand rejected under § 103(a) as obvious over Spofford; Dobbins; Pearson;

and U.S. Patent No. 6,085,030 ("Whitehead"). Claims 5-8, 10-18, 24-37, and 43-56

stand rejected under § 103(a) as obvious over Spofford; Dobbins; Pearson; and U.S.

Patent No. 6,016,499 ("Ferguson"). Claims 19, 38, and 57 stand rejected under

§ 103(a) as obvious over Spofford, Dobbins, Pearson, Ferguson, and the appellant's

admitted prior art ("APA").

II. OPINION

Our opinion addresses the claims in the following order:

- claims 1-5, 20-24, and 39-43
- claims 9-13, 17, 18, 28-32, 36, 37, 47-51, 55, and 56
- claims 6, 8, 14-16, 25, 27, 33-35, 44, 46, and 52-54
- claims 7, 26, and 45
- claims 19, 38, and 57.

A. CLAIMS 1-5, 20-24, AND 39-43

"When multiple claims subject to the same ground of rejection are argued as

a group by appellant, the Board may select a single claim from the group of claims

that are argued together to decide the appeal with respect to the group of claims as

to the ground of rejection on the basis of the selected claim alone. Notwithstanding

any other provision of this paragraph, the failure of appellant to separately argue

claims which appellant has grouped together shall constitute a waiver of any

argument that the Board must consider the patentability of any grouped claim

separately." 37 C.F.R. § 41.37(c)(1)(vii) (2005).

Here, the appellant argues claims 1, 20, and 39, which are subject to the same

ground of rejection, as a group. (Appeal Br. at 17-25.) We select claim 1 as the

sole claim on which to decide the appeal of the group. "With this representation in

mind, rather than reiterate the positions of the examiner or the appellant *in toto*, we

focus on the two points of contention therebetween." *Ex parte Pittaro*, No. 2005-

2057, 2006 WL 1665401, at *2 (B.P.A.I. 2006).

1. Receiving and Mapping Queries in Plural Protocols

The examiner makes the following findings.

Spofford teaches the invention substantially as claimed including: OID
(OID, col 2, ln 59-67, col 6, ln 1-45, col 4, ln 1-9, col 7, ln 20-62,
col 8, ln 15-52), abstraction layer (MIB manager, col 2, In 59-67/
col 6, ln 1-45/ col 4, ln 1-91 col 7, In 20-621 col 8, ln 15-52[/] col 11,
ln 1-30/ col 12, ln 40-67), an OID tree structure (col 2, ln 59-671 col 6,
ln 1-45[/] col 4, ln 1-91 col 7, ln 20-62/col 8, ln 15-52/ col 11, ln 1-30/

col 12, ln 40-67), query (query, col 11, ln 1-15), repository (the
MIB 206, col 9, ln 40-41/ col 10, ln 58-59).

(Examiner's Answer at 4.) He further finds, "Dobbins teaches the OID abstraction

layer is capable of receiving queries for objects in two or more different protocols

(a standard interface for the Management Information Base for object access by any

management protocol or other entity including SNMP, SNMPv2, DMP, col 16,

ln 20-23). . . ." (*Id.*) The examiner also makes the following findings.

> Pearson teaches mapping queries from multiple protocol interfaces to
> application programming interface (API) requests that the repository
> understands (convert data from a parsed client request to a format
> compatible with the API for the application service identified in the
> application service call, col 15-20/ converting client messages between
> the language supported by a client program and the language used to
> implement a application service, col 4, ln 67 to col 5, ln 1-3/
> convert s [sic] user queries from an Internet protocol to one compatible
> with a database . . . the user queries to the appropriate query language
> format for the, col 2, ln 60-651 [sic] presentation logic 80
> communication with client program using HTML documents, other
> communication protocols may be used, col 11, ln 42-45/ client
> messages which are in the format of a known [I]nternet service, such
> as E-mail, Files transfer protocol, col 5, ln 60-65/col 10, ln 32-37).

(*Id.* at 5.) The appellant argues, "*Spofford, Dobbins*, and *Pearson* fail to

teach or suggest that 'the OID abstraction layer is capable of receiving

queries for objects in two or more different protocols and supports the two or

more different protocols by mapping queries from multiple protocol

interfaces to application program interface (API) requests that the repository

understands'. . . ." (Appeal Br. at 23.)

a. Claim Construction

"Analysis begins with a key legal question — what is the invention claimed?"

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597

(Fed. Cir. 1987). In answering the question, "the PTO gives claims their 'broadest

reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324, 72 USPQ2d 1209,

1211 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664,

1668 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims

from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057,

1059 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320,

1322 (Fed. Cir. 1989)).

Here, claim 1 recites in pertinent part the following limitations: "the OID

abstraction layer is capable of receiving queries for objects in two or more different

protocols and supports the two or more different protocols by mapping queries from

multiple protocol interfaces to application program interface (API) requests that the

repository understands. . . ." Giving the representative claim the broadest,

reasonable construction, the limitations require that an OID abstraction layer

receives queries for objects in at least two different protocols and maps the queries

from the protocols to API requests that a repository understands.

b. Obviousness Determination

"Having determined what subject matter is being claimed, the next inquiry is

whether the subject matter would have been obvious." *Ex Parte Massingill*,

No. 2003-0506, 2004 WL 1646421, at *3 (B.P.A.I 2004). The question of

obviousness is "based on underlying factual determinations including . . . what th[e]

prior art teaches explicitly and inherently. . . ." *In re Zurko*, 258 F.3d 1379, 1383,

59 USPQ2d 1693, 1696 (Fed. Cir. 2001) (citing *Graham v. John Deere Co.*, 383

U.S. 1, 17-18, 148 USPQ 459, 467 (1966); *In re Dembiczak*, 175 F.3d 994, 998, 50

USPQ2d 1614, 1616 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d

1782, 1784 (Fed. Cir. 1995)). "'A *prima facie* case of obviousness is established

when the teachings from the prior art itself would appear to have suggested the

claimed subject matter to a person of ordinary skill in the art.'" *In re Bell*, 991 F.2d

781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*,

531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Here, the examiner's aforementioned finding that Spofford teaches an OID

abstraction layer that receives queries for objects is uncontested. The primary

reference confirms this finding by disclosing "[a] dynamic management information

base (MIB) manager . . . [a]s a set of software interfaces, semantics, procedures and

data structures that work together as a system to dynamically manage a tree of

SNMP data objects identified by a standard object identifier (OID) along with

each object's value." (Col. 2, ll. 59-64.) "An agent uses the interface of the MIB

manager to add and delete MIB objects by OID. When a new object or set of

objects is added to the MIB tree, the agent provides the MIB manager with

references to subroutines within the agent and external to the MIB manager, which

subroutines operate to manage the identified objects by monitoring and controlling

the objects' values." (*Id.* at ll. 64-67.)

For our part, we find that Dobbins teaches that a plurality of protocols are

used to query objects in a repository. Namely, the secondary reference discloses

"[a] standard interface for the Management Information Base for object access by

any management protocol or other entity including SNMP, SNMPv2, DMP, local

device management, and other Managed Objects." (Col. 16, ll. 20-23.) The

appellant's admission that the SNMP, LDAP, and CIM/XML protocols were used

to query objects in an OID format, (Spec. at 1-3), confirms our finding.

Furthermore, we agree with the examiner's finding that Pearson receives

queries for objects in at least two different protocols and maps the queries from the

protocols to API requests that a repository understands. Specifically, the tertiary

reference "permits customer service computers 52 . . . to utilize internet services,

such as e-mail, World Wide Web, FTP, Telnet, Rlogin and Usenet in a secure

manner," (col. 10, ll. 32-35), to submit requests for objects in "a legacy database, a

conventional remotely accessible database such as a credit service database, or

some other type of data repository for customer financial data or the like." (Col. 6,

ll. 62-65). Once a request is received in one of the aforementioned protocols,

"[p]ersonality library 82 converts data from [the] . . . client request to a format

compatible with the API for the application service identified in the application

service call." (Col. 11, ll. 16-19.) "For example, client interface 12 may receive a

client request in an HTML file from a client program 30. After the request is

authenticated and parsed by presentation logic 80, the data from the request

identifying a source account, a transfer amount, and a destination account, for

example, is converted to an application service call by personality library 82.

If the application service is written in an object language, such as C++,

personality library 82 converts the data to an object oriented protocol for the

application service." (*Id.* at ll. 19-28).

Because Spofford teaches an OID abstraction layer that receives queries for

objects, Dobbins teaches that a plurality of protocols are used to query objects in a

repository, and Pearson teaches receiving queries for objects in at least two

different protocols and mapping the queries from the protocols to API requests that

a repository understands, we find that the combined teachings of these references

would have suggested an OID abstraction layer that receives queries for objects in

at least two different protocols and maps the queries from the protocols to API

requests that a repository understands.

2. Motivation to Combine Teachings

The examiner makes the following findings.

> It would have been obvious to one of ordinary skill in the art at
> the time the invention layer is capable of receiving queries for objects
> in two or more different protocols, registering the O[ID] tree structure
> with a registry associated with the OID would improve the use of
> Spofford and Dobbins's systems by providing a high availability of
> service, remoter management for supporting a number of different
> routing protocols.

(Examiner's Answer at 5.)

> It would have been obvious to one of the ordinary skill in the art
> at the time the invention that the repository understands would
> improve the efficiency of Spofford and Dobbins's systems by allowing
> the customer with real time to access an execution of transaction
> commands over an open network without modifying a legacy database
> management system to support and increased number of users.

(*Id.* at 6.) The appellant "disagrees that this would be a proper motivation for

combining *Spofford*, *Dobbins*, and *Pearson*." (App. Br. at 24.)

"The presence or absence of a motivation to combine references in an

obviousness determination is a pure question of fact." *In re Gartside*, 203 F.3d

1305, 1316, 53 USPQ2d 1769, 1776 (Fed. Cir. 2000) (citing *In re Dembiczak*, 175

F.3d 994, 1000, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999)). A suggestion to

combine teachings from the prior art "may be found in explicit or implicit teachings

within the references themselves, from the ordinary knowledge of those skilled in

the art, or from the nature of the problem to be solved." *WMS Gaming Inc. v. Int'l*

Game Tech., 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999) (citing

In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998)).

Here, the examiner has found a motivation to combine teachings from

Spofford, Dobbins, and Pearson within the three references themselves and also

from the ordinary knowledge of those skilled in the art. For example, Pearson

provides "access to a legacy database over an open network without requiring

storage of customer transaction commands for batch processing," (col. 3, ll. 56-59),

"supports real time execution of customer transaction commands that require data

from more than one legacy database," (*id.* at ll. 59-61), and provides "real time

access and execution of transaction commands over an open network without

modifying a legacy database management system to support an increased number of

users." (*Id.* at ll. 63-67). For its part, Dobbins "provides a high availability of

service, remote management and monitoring, and **interoperability**, (col. 2, ll. 1-2

(emphasis added)), and features "an open-ended architecture . . . open to

changing technologies . . . **in the protocol**, and open to expanding the size of the

network." (*Id.* at ll. 3-6 (emphasis added)).

"Broad conclusory statements regarding the teaching of multiple references,

standing alone, are not 'evidence.'" *In re Dembiczak,* 175 F.3d 994, 999, 50

USPQ2d 1614, 1617 (Fed. Cir. 1999) (citing *McElmurry v. Arkansas Power &*

Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993); *In re*

Sichert, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977)). Similarly,

"[a]rgument in the brief does not take the place of evidence in the record." *In re*

Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965) (citing *In re Cole,*

326 F.2d 769, 773, 140 USPQ 230, 233 (CCPA 1964)). Here, the appellant's broad

summaries of what the references teach, (App. Br. at 24), are not evidence.

Although he disagrees with the examiner, the appellant does not address the specifics of the examiner's reasons for combining teachings of the references let alone show error therein. Just as "[i]t is not the function of [the U.S. Court of Appeals for the Federal Circuit] to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art," *In re Baxter Travenol Labs.*, 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991), it is not the function of this Board to examine claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art. Therefore, we affirm the rejection of claim 1 and of claims 20 and 29, which fall therewith.

Rather than arguing the rejection of claims 2-5, 21-24, and 40-43 separately, the appellant relies on his aforementioned arguments. (Appeal Br. at 25 and 29.) Unpersuaded by these arguments, we also affirm the rejections of these claims.

B. CLAIMS 9-13, 17, 18, 28-32, 36, 37, 47-51, 55, AND 56

"Rather than reiterate the positions of the examiner or the appellant *in toto*,

we focus on the point of contention therebetween." *Ex parte Kaysen*, No. 2003-

0553, 2004 WL 1697755, at *2 (B.P.A.I. 2004). The examiner finds, "Dobbins

teaches the OID abstraction layer is capable of receiving queries for objects in two

or more different protocols (a standard interface for the Management Information

Base for object access by any management protocol or other entity including

SNMP, SNMPv2, DMP, col 16, ln 20-23). . . ." (Examiner's Answer at 5.) He also

makes the following findings.

> Pearson teaches mapping queries from multiple protocol interfaces to
> application programming interface (API) requests that the repository
> understands (convert data from a parsed client request to a format
> compatible with the API for the application service identified in the
> application service call, col 15-20/ converting client messages between
> the language supported by a client program and the language used to
> implement a application service, col 4, ln 67 to col 5, ln 1-3/
> convert s [sic] user queries from an Internet protocol to one compatible
> with a database . . . the user queries to the appropriate query language
> format for the, col 2, ln 60-651 [sic] presentation logic 80
> communication with client program using HTML documents, other
> communication protocols may be used, col 11, ln 42-45/ client
> messages which are in the format of a known [I]nternet service, such
> as E-mail, Files transfer protocol, col 5, ln 60-65/col 10, ln 32-37).

(*Id.* at 5.) The appellant argues, "*Spofford, Dobbins, Pearson,* and *Ferguson* do

not teach or suggest 'interpreting the first query according to the protocol

recognized by the OID abstraction layer, wherein the protocol recognized by the

OID abstraction layer is one of the two or more different protocols'. . . ." (App. Br.

at 28-29.)

1. Claim Construction

Claim 9 recites in pertinent part the following limitations: "interpreting the

first query according to the protocol recognized by the OID abstraction layer,

wherein the protocol recognized by the OID abstraction layer is one of the two or

more different protocols. . . ." Giving the claim the broadest, reasonable

construction, the limitations require interpreting a query according to one of the

protocols recognized by the OID abstraction layer.

2. Obviousness Determination

As mentioned regarding claims 1-5, 20-24, and 39-43, the examiner's

aforementioned finding that Spofford teaches an OID abstraction layer that receives

queries for objects is uncontested by the appellant and confirmed by the primary

reference. As also mentioned regarding the first group of claims, we have found

that Dobbins teaches that a plurality of protocols are used to query objects in a

repository and Pearson "permits customer service computers 52 . . . to utilize

internet services, such as e-mail, World Wide Web, FTP, Telnet, Rlogin and Usenet

in a secure manner," (col. 10, ll. 32-35), to submit requests for objects in database.

"A block diagram of the structure of client interface 12 is shown in FIG. 4,"

(col. 11, ll. 6-7), of the tertiary reference. The interface's presentation logic 80

performs functions that include "authenticate and parse client requests," (*id*. at ll. 9-

10), and "make an application service call using data from parsed client requests. .

. ." (*Id*. at ll. 10-11.) "The authentication and parsing of the client request is to

verify the content of the request. This data is [sic] then incorporated in an

application service call which invokes personality library 82." (*Id*. at ll. 13-16.)

Because Spofford teaches an OID abstraction layer that receives queries for objects, Dobbins teaches that a plurality of protocols are used to query objects in a repository, and Pearson teaches authenticating and parsing client requests submitted in different protocols (viz., e-mail, World Wide Web, FTP, Telnet, Rlogin, and Usenet), we find that the combined teachings of these references would have suggested interpreting a query according to one of the protocols recognized by the OID abstraction layer. Therefore, we affirm the rejection of claim 9.

Rather than arguing the rejection of claims 10-12, 17, 18, 28-32, 36, 37, 47-51, 55, and 56, separately, the appellant relies on his aforementioned arguments. (Appeal Br. at 26-29.) Unpersuaded by these arguments, we also affirm the rejections of these claims.

C. CLAIMS 6, 8, 14-16, 25, 27, 33-35, 44, 46, and 52-54

The examiner alleges, "Pearson teaches the reply message is formatted for an appropriate protocol for the target protocol interface, and wherein the appropriate is one of the two or more different protocols (col 11, ln 40-45)." (Examiner's Answer

at 8.) The appellant argues, "The cited portions of *Spofford* and *Ferguson* only

teach a protocol interface, a request, a reply message and an API rather than

teaching that the reply message is formatted for an appropriate protocol for the

protocol interface, and wherein the appropriate protocol is one of the two or more

different protocols. . . ." (App. Br. at 29.)

1. Claim Construction

"The Patent and Trademark Office (PTO) must consider all claim limitations

when determining patentability of an invention over the prior art." *In re Lowry*,

32 F.3d 1579, 1582, 32 USPQ2d 1031, 1034 (Fed. Cir. 1994) (citing *In re Gulack*,

703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983)). In particular,

"[c]laims in dependent form shall be construed to include all the limitations of the

claim incorporated by reference into the dependent claim." 37 C.F.R. § 1.75.

Here, claims 6 and 25 recite in pertinent part the following limitations:

the OID abstraction layer receives the information retrieved from the
repository through the API and encapsulates the information in a reply
message to a target protocol interface, wherein the reply message is

formatted for an appropriate protocol for the target protocol interface,
and wherein the appropriate protocol is one of the two or more
different protocols.

Claims 1 and 20, from which claims 6 and 25 respectively depend, recite in

pertinent part the following limitations: "receiving queries for objects in two or

more different protocols. . . ." Considering all the limitations, including those

incorporated by reference into the dependent claims, claims 6 and 25 require

formatting data retrieved from the repository into the same protocol with which the

date were requested. Claims 8, 14-16, 27, 33-35, 44, 46, and 52-54 include similar

limitations.

2. Obviousness Determination

"In rejecting claims under 35 U.S.C. Section 103, the examiner bears the

initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert,*

9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citing *In re Oetiker,*

977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)). Here, as

mentioned regarding claims 9-13, 17, 18, 28-32, 36, 37, 47-51, 55, and 56,

Pearson's clients may submit a query in e-mail, World Wide Web, FTP, Telnet,

Rlogin, or Usenet protocol. Rather than formatting the reply into the format of the

query, however, the "personality library 82 of client interface 12 . . . converts the

response data to a form compatible for HTML files and presentation logic 80 builds

an HTML document that is sent to client program 30." (Col. 11, ll. 40-43.)

The examiner does not allege, let alone show, that the addition of Spofford,

Dobbins, Ferguson, or APA cures the aforementioned deficiency of Pearson.

Absent a teaching or suggestion of formatting data retrieved from the repository

into the same protocol with which the date were requested, we are unpersuaded of a

prima facie case of obviousness. Therefore, we reverse the rejection of claims 6, 8,

14-16, 25, 27, 33-35, 44, 46, and 52-54.

D. CLAIMS 7, 26, AND 45

The appellant argues claims 7, 26, and 45, which are subject to the same

ground of rejection, as a group. (Appeal Br. at 30.) Therefore, we select claim 7 as

the sole claim on which to decide the appeal of the group.

The examiner makes the following findings.

> Pearson teaches interpret[ing] the request according to a
> protocol of the requesting protocol interface wherein the protocol of
> the requesting protocol interface is one of the two or more different
> protocols (when a user wants to communicate an Internet service
> message such as e-email, to a customer service representative, the
> message is provided through proxy firewall 54 to the e-mail service for
> delivery to a customer service computer 54. The customer service
> representative may be utilize information in the e-mail message to
> verify or correct user data through and application service 14, col 5,
> ln 61-65 and col 7, ln 27-35/ col 10, ln 32-39/ col 11, ln 15-20/col 12,
> ln 58-60/ col 14, ln 35-43/col 2, ln 56- 60/col 4, ln 45-49) and
> Ferguson teaches receives an API reply from the repository (API / an
> API reply translating a relational database language into an executable
> API, col 5, ln 5-201 [sic] col 8, ln 21-67).

(Examiner's Answer at 9.) The appellant argues, that "the cited portion of Ferguson

only teaches translating the API result into a relational database result." (App. Br.

at 30.)

1. Claim Construction

Claim 7 recites limitations similar to those of claim 9, *supra*. Giving the

representative claim the broadest, reasonable construction, the limitations require

interpreting a query according to one of the protocols recognized by the OID

abstraction layer.

2. Obviousness Determination

"Non-obviousness cannot be established by attacking references individually

where the rejection is based upon the teachings of a combination of references." *In*

re Merck & Co., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986) (citing

In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)). In

determining obviousness, furthermore, a reference "must be read, not in isolation,

but for what it fairly teaches in combination with the prior art as a whole." *Id.*

Here, the appellant's argument concerning Ferguson alone overlooks the

teachings of Spofford, Dobbins, and Pearson. For the reasons explained regarding

claims 9-13, 17, 18, 28-32, 36, 37, 47-51, 55, and 56, we find that the combined

teachings of these references would have suggested interpreting a query according

to one of the protocols recognized by the OID abstraction layer. Therefore, we

affirm the rejection of claim 7 and of claims 26 and 45, which fall therewith.

E. CLAIMS 19, 38, AND 57

The appellant argues claims 19, 38, and 57, which are subject to the same

ground of rejection, as a group. (App. Br. at 31-32.) Therefore, we select claim 19

as the sole claim on which to decide the appeal of the group.

The examiner makes the following findings.

> It would have been obvious to one of the ordinary skill in the art
> at the time the inventions was made to combine the teaching of
> Spofford, Dobbins, Pearson, Ferguson and APA because APA'S
> CIM/XML would improve the flexibility of Spofford, Dobbins,
> Pearson and Ferguson's systems by allowing different management
> applications to collect the required data from a variety of sources.

(Examiner's Answer at 10-11.) The appellant alleges that "the only suggestion or

motivation for making the proposed modification is found in Appellant's own

specification." (App. Br. at 31-32.)

1. Claim Construction

Claim 19 recites in pertinent part the following limitations: "Common

Information Model used conjunction with eXtendable Markup Language

(CIM/XML) is a protocol recognized by the OID abstraction layer." Giving the

representative claim the broadest, reasonable construction, the limitations require

that the OID abstraction layer recognizes the CIM/XML protocol.

2. Obviousness Determination

Disclosing "[a] standard interface for the Management Information Base for

object access by **any management protocol**," (col. 16, ll. 20-21 (emphasis added)),

we find that Dobbins suggests the use of any known management protocol. It is

uncontested that CIM/XML was a known management protocol; in fact, the

appellant has admitted that "SNMP, LDAP, **CIM/XML**," (Spec. at 3 (emphasis

added)), were know management protocols. Because Dobbins suggests the use of

any known management protocol, and CIM/XML was a known management

protocols, we find that the combined teachings of the references would have

suggested that the OID abstraction layer recognizes the CIM/XML protocol.

III. CONCLUSION

In summary, the rejections of claims 1-5, 7, 9-13, 17-24, 26, 28-32, 36-43,

45, 47-51, and 55-57 under § 103(a) are affirmed. The rejection of claims 6, 8, 14-

16, 25, 27, 33-35, 44, 46, and 52-54 under § 103(a), however, is reversed.

"Any arguments or authorities not included in the brief or a reply brief filed

pursuant to [37 C.F.R.] § 41.41 will be refused consideration by the Board, unless

good cause is shown." 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, our affirmance is

based only on the arguments made in the briefs. Any arguments or authorities

omitted therefrom are neither before us nor at issue but are considered waived.

Cf. In re Watts, 354 F.3d 1362, 1367, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004)

("[I]t is important that the applicant challenging a decision not be permitted to raise

arguments on appeal that were not presented to the Board.") No time for taking any

action connected with this appeal may be extended under 37 C.F.R.

§ 1.136(a)(1)(iv).

AFFIRMED-IN-PART

JOSEPH L. DIXON   )
Administrative Patent Judge   )
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)
)
)
) BOARD OF PATENT
LANCE LEONARD BARRY   )   APPEALS
Administrative Patent Judge   )   AND
) INTERFERENCES
)
)
)
HOWARD B. BLANKENSHIP   )
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